

RECEIVED
MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

3:06cv14-A

2006 JAN -6 A 9 27

United States District Court	District Middle District Alabama
Name (under which you were convicted): DAVID Jerome Crawford	Docket or Case No.: 3:03-CR-220-E
Place of Confinement: Federal Correctional Institute { Edgefield South Carolina	Prisoner No.: 11307-002
UNITED STATES OF AMERICA	Movant (include name under which you were convicted) v. DAVID Jerome Crawford

MOTION

- (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court For Middle District of Alabama Eastern Division
- (b) Criminal docket or case number (if you know): 3:03-CR-220-E
- (a) Date of the judgment of conviction (if you know): ~~March 15, 2004~~ March 15, 2004
- (b) Date of sentencing: June 23, 2004
- Length of sentence: 188 months / 5 years supervised release
- Nature of crime (all counts): Felon in possession of firearm
922(g)(1)
- (a) What was your plea? (Check one)
(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? NA
- If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐ NA

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7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ NA No ☐
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: United States Court of Appeals 11th Circuit
- (b) Docket or case number (if you know): 04-13452-BB
- (c) Result: Affirmed
- (d) Date of result (if you know): January 31, 2005
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: ① Mr. Crawford was detained and arrested without probable cause. ② The firearm was not in plain view when Mr. Crawford was seized and arrested. ③ Exigent circumstances did not justify the detention of Mr. Crawford.
- _____
- _____
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐
- If "Yes," answer the following:
- (1) Docket or case number (if you know): 04-9992
- (2) Result: June 6, 2005 The petition for writ of certiorari is denied.
- (3) Date of result (if you know): June 6, 2005
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: The Court failed to identify any facts justifying reasonable suspicion that criminal activity may be afoot.
- _____
- _____
- _____
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?
- Yes ☐ No ☒
11. If your answer to Question 10 was "Yes," give the following information:
- (a) (1) Name of court: NA
- (2) Docket or case number (if you know): NA
- (3) Date of filing (if you know): NA

(4) Nature of the proceeding: NA

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒ NA

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: NA

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒ NA

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application? NA

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: NA

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Breach of Plea Agreement Rule 11(c)(1)(c) and 11(c)(1)(c)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- 1) Movant's Plea Agreement was to a range of seventy-seven to ninety-six months with a recommendation to the low end. See: (Page No. 6 - lines 20-25) - (Page No. 9 lines 7-16) of Change of Plea Proceedings March 15, 2004
- 2) Government fail to produce motion for substantial Assistance for Movant due after providing information that lead to arrest of Eric Crawford and Tyree Floyd of Auburn, Alabama by Auburn Police after meeting with Auburn Detetives on May 10th 2004 at Assistant United States Attorney Susan R. Redmond's Office - One Court Square, Suite 201 Montgomery, Alabama 36104.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Movant expected a Motion from Government for substantial assistance and to honor Plea Agreement.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: NA

Name and location of the court where the motion or petition was filed: NA

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available): NA

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒ NA

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒ NA

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒ NA

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NA

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available): NA

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: NA

GROUND TWO: Conviction obtained by plea of guilty which was not made with understanding of the consequences of plea.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1.) Movant was informed at arraignment the maximum penalty he could receive was 10 years and the minimum 1 year

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Again and advice
of Movant's attorney not to object in order to get Motion from
Government for Substantial Assistance.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: NA

Name and location of the court where the motion or petition was filed: NA

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available): NA

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒ NA

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒ NA

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒ NA

(6) If your answer to Question (c)(4) is "Yes," state: NA

Name and location of the court where the appeal was filed: NA

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available): NA

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: NA

GROUND THREE: Sixth Amendment Violation

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- 1.) The Court failed to impose a sentence of the kind and within the range of seventy-seven to ninety-six months of a binding plea agreement.
- 2.) Provide substantial assistance to Auburn Police Detectives May 10th 2004 and was to testify at sentencing of Herbert Tyrell Smith Sentencing Hearing.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Movant expected to receive Government Motion for reduction of sentence into agreed sentencing range.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: NA

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available): NA

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ NA

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ NA

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ NA

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NA

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available): NA

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: NA

GROUND FOUR: Unreasonable Search and seizure

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant was getting a ride and was dropped off by the driver Tyrell Smith at a church on Beehive Road in Auburn, Alabama. When Smith let the Movant out the Police pulled up and jumped out with guns drawn and persued the movant who was walking away. The Movant was head to a pathway behind church which leads to a Trailer Park off Hwy U.S. 29 in Auburn, Alabama where Marie Cobb lives, a friend.

As Movant walked away Police called to him to stop and turn around.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: NA

Name and location of the court where the motion or petition was filed: NA

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available): NA

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ NA

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ NA

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ NA

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NA

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available): NA

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: NA

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them: Grounds One, two and three were not presented because Movant and Movant's Attorney was lead to believe Government would make Motion to reduce Movant's sentence into the range pleaded to for substantial assistance.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea: Ms. Christine A. Freeman

Federal Defenders 201 Monroe Street, Suite 407 Montgomery, AL 36104

(c) At trial:

(d) At sentencing: Same: Ms. Christine A. Freeman

(e) On appeal: Same: Ms. Christine Freeman
201 Monroe Street, Suite 407 Montgomery, Alabama 36104

(f) In any post-conviction proceeding: Same: Christine Freeman

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: NA

(b) Give the date the other sentence was imposed: NA

(c) Give the length of the other sentence: NA

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒ NA

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Correct Sentence,
Set Aside or Vacate Sentence

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on December
31, 2005 (month, date, year).

Executed (signed) on 12/31/2005 (date).

David J. Crawford
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

In The United States District Court
For The Middle District of Alabama
Eastern Division.

I declare (or certify, verify, or state) under penalty
of perjury that the foregoing is true and correct
and that this Inmate Inquiry to Account Balances
is true and correct.